

**State of Indiana
Sentencing Policy Study Committee**

MINUTES

Introduction:

The third meeting of the 2006 Sentencing Policy Study Committee was held on Thursday, October 12th in room 431 of the Indiana State House in Indianapolis, Indiana. The meeting convened at 1:00 p.m.

Attendance:

A. Committee Members in Attendance:

- Representative Ralph Ayres, Chair
- Representative Ralph Foley
- Representative William Crawford
- Representative Linda Lawson
- Senator Richard Bray
- Steve Johnson
- Honorable James Humphrey,
- J. David Donahue
- R. Todd McCormack
- Sheila Hudson
- Michael Cunegin)
- Senator Long
- Senator Howard
- Senator Anita Bowser
- Honorable Roger Duvall
- Honorable Lynn Murray

B. Committee Members Not In Attendance:

- Larry Landis, Honorable Frances Gull, Chief Justice
Shepard, Dr. Steven Ross

C. Staff and Consultants:

- Andrew Hedges, Legislative Services Agency
- KC Norwalk, Legislative Services Agency
- James M. Hmurovich, Consultant

D. Discussion Topics:

1) Adam Walsh Legislation and Its Impact on Indiana:

Steve Johnson, the Executive Director of the Prosecuting Attorneys Council and a Member of the Committee, provided an overview of PD 3440. This is a proposed bill that amends Indiana statutes to come into further compliance with the federal Adam Walsh legislation. Failure to reach total compliance (within 3-5 years) may result in the loss of as much as 10% of the Burns funds from the U.S. Department of Justice, which currently would be estimated to be a loss of approximately \$350,000. Federal administrative regulations are being drafted at this time, but the approval of those regulations will not be completed prior to the initiation of the 2007 Indiana legislative session.

PD 3440 addresses the issue of sex offenders and adds language to the current statutes that adds the following: a) promoting prostitution as a class B felony, b) promotion of human trafficking if the victim is less than 18 years old, c) sexual trafficking of a minor, d) human trafficking of a victim less than 18 years old, and, e) possession of child pornography as a first offense, to the list of offenses that requires a person to register as a sex offender. It also specifies that registration as a sex offender is not required for a parent or guardian convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship, or a person convicted of sexual misconduct with a minor a class C felony under certain conditions. It also removes lifetime registration requirement for sexual battery as a class D felony and imposes the standard ten year registration requirement.

The Committee Members engaged in a comprehensive discussion of the Preliminary Draft and a motion was made by Senator Long and seconded by Senator Bray to make some minor modifications to the draft. Senator Long then moved for adoption of Preliminary Draft 3440 and the motion was seconded by Senator Bray. The vote was 16-0 in favor of adoption of PD 3440 as a product of the Sentencing policy Study Committee.

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2) Suggested Modifications to the Community Transition Program:

Deana McMurray, Director of Community Corrections for the Department of Correction provide a brief overview of the community transition process, identifying that a significant number of offenders who are eligible for the program are not accepted into the program. Refusal by an offender to sign a consent form to participate in the program provides the

offender with the ability to refuse to participate in the program, and the statute allows the offender to delay admittance into the program. Judges and correctional administrators appear to be in consensus that the offender should not have the ability to control this process. This is especially important due to the fact that over 95% of the offenders will be released from the Department of Correction and a systematic, coordinated re-entry into the community is an important aspect of public safety.

Another area that requires review of the current statutes is the disciplinary process. Randy Koester, Chief of Staff for the Department of Correction indicated that there is inconsistency and inequity in which disciplinary process is managed throughout the state. The impact of this is an inconsistent adherence to the due process rights of an offender, as well as a frequent lack of documentation to substantiate or indicate how and why a decision was made. Therefore, a discussion ensued that focused on the ability of the Department of Correction to have some authority in the disciplinary process to ensure consistency and uniformity. It was suggested that in part, this could be accomplished through training, having counties mirror the process for disciplinary action used by the Department of Correction, and a more clear definition of what constitutes a hearing. The Department of Correction is seeking statutory clarity on this entire issue.

Another significant issue involves the removal of credit time when the offender is near completion of the entire sentence. Errors in that process so close to a potential release date significantly impact exposure for the Department to offender claims and grievances. Similarly, a significant number of offender appeals are filed due to the severity of punishment without appropriate documentation of “what happened” and “why”.

The Chair requested that Committee Members Hudson and Foley work with the Department of Correction and the Legislative Services Agency to develop a preliminary bill draft for the next meeting of the Committee.

The Vigo County Community Corrections Director, Bill Watson testified in favor of statutory changes to prohibit offender “opt outs” of the community transition program and more consistency in the determination of disciplinary decisions. The Department of Correction was appreciative for the discussion as community corrections is seen as a means to promote public safety for the successful re-entry of an offender into the community.

3) Methamphetamine Offender Registry:

The Chair expressed interest into assessing the importance of establishing a methamphetamine offender registry in Indiana. He noted that 4 states have this type of registry and that they do not present the management difficult involved in the sex offender registry. With this type of registry, it is a simple reporting by a court, of statutorily identified crimes that would have to be reported by the Court to the registry database; there is no offender registration. The Chair noted that the consequences for harm (due to the chemical residue and processes) have serious health effects on children and individuals exposed to the fumes. A discussion was held about whether the registry should focus on individuals convicted of possession or use as opposed to manufacturers. The Chair requested that the Legislative Services Agency develop a preliminary bill draft for a registry for the next meeting.

4) Impact of Sealing and Expunging of Criminal Records:

A follow-up discussion was held concerning the expungement of criminal records. There was a diversity of thought on this topic from the various Committee Members. There was some agreement that current Indiana law on expungment is very strict, but there also was some agreement that proposed HB 1408 (prior session) was too broad. A potential area to find common ground was to a) restrict the offenses that could be expunged, including timeframes, and, b) accessibility to the Courts and law enforcement of all crimes regardless of expungement. A concern was expressed that the statute should allow for use of an expunged record in the prosecution of a “habitual offender”. It was again noted that HB 1408 simply was intended to be a “framework” to initiate a dialogue and not to be considered a final working draft.

The Chair urged supporters of the concept to develop a preliminary bill draft for the next meeting.

5) Ronald Poling vs State of Indiana:

LSA attorney Any Hedges provided an overview of an appellate court case that reversed a lower court’s ruling on a neglect finding, because the statutory criteria of a Class B and a Class C neglect felony were identical. A discussion followed by Committee Members to develop statutory language that would differentiate the two felony types. The Chair requested that LSA work with Committee Members Steve Johnson and Senator Bray to develop a preliminary bill draft by the next meeting.

6) Other Preliminary Bill Drafts:

LSA attorney Andy Hedges provided an overview of a document identified as 20070106.010/106 that corrects certain cross references that relate to HIV testing after convictions for certain sex and substance abuse offenses and makes other changes and conforming amendments to IC 31-37-19-12 concerning a delinquent child, due to the commission of a delinquent act that if committed by an adult Representative Crawford moved for adoption of the changes and the motion was seconded by Todd McCormack. The Committee voted 12-0 in favor of the adoption of the amendments as a product of the Sentencing Policy Study Committee. Senator Bray agreed to sponsor the bill in the Senate.

Mr. Hedges also provide a very brief overview of PD 3437 which specifies the procedure for determining who is a sexually violent predator and revises the definition of “sex offense. Due to the lateness of hour and the importance of the issue, the Chair deferred action on the preliminary draft until the next Committee meeting.

E. Adjournment:

The Chair adjourned the meeting at 3:50 p.m.